



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 5, 1996

Mr. William H. Bingham
McGinnis, Lochridge & Kilgore, L.L.P.
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

OR96-1598

Dear Mr. Bingham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. We assigned your request ID# 101045.

The San Angelo Independent School District (the "district"), which you represent, received a request for "any information regarding the departure of Dan Gandy from [the district], including any monetary settlements." You state that the district has released some of the requested information, but assert that the settlement agreement is excepted from required public disclosure under section 552.102 of the Government Code.

We note, initially, that in addition to the settlement agreement, you submitted to this office a letter from Mr. Gandy to the district's Board of Education, a letter from Mr. Gandy to the district's Board of Trustees, a copy of a check from the district to Mr. Gandy, and the minutes of a district meeting held on May 29, 1996. As you have raised no exceptions to disclosure of these items, we assume that they have been or will be released to the requestor.

Section 552.102 protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). For information to be protected from public disclosure under the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*,

540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

The settlement agreement that you submitted contains a nondisclosure provision which provides that its terms shall not be made known to anyone outside of the district, unless required by law. Normally, a settlement agreement that is not made confidential by a court order will be open to the public. Open Records Decision No. 114 (1975); *see also* Open Records Decision Nos. 444 (1986) at 6 ("governmental bodies may not simply agree to keep information confidential"), 415 (1984) (settlement agreement made confidential by court order excepted from disclosure under predecessor to Gov't Code § 552.107(2)); *cf. Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 358 U.S. 931 (1977) ("we do not believe that information should be excepted from disclosure merely because the individual furnishing such information did so with the expectation that access to the information would be restricted"). Thus, the fact that the settlement agreement contains a confidentiality agreement does not make the information confidential. Moreover, the information generally relates to actions of a public employee and matters of public business and, as such, is of legitimate public interest. *See, e.g.*, Open Records Decision No. 444 (1986) at 4 (legitimate public interest in information relating to public employees). Additionally, the information is not of a highly intimate or embarrassing nature about a person's private affairs. Therefore, the settlement agreement must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 101045

Enclosures: Submitted documents

cc: Mr. Randy Zeis
Assistant News Director
KLST 8
P.O. Box 1941
San Angelo, Texas 76902
(w/o enclosures)